

March 29, 2011

William Clark
President
Association of Legal Professionals
c/o City Attorney's Office
200 E. Santa Clara Street
San Jose, CA 95113

RE: City's Package Proposal "A" to ALP and ALP Counter-Offer

Dear Mr. Clark:

We are in receipt of the Association of Legal Professionals' (ALP) initial package proposal to the City dated March 23, 2011, as well as ALP's letter delineating your arguments for rejecting the City's proposals. While the City is appreciative of the package proposal for settlement submitted by ALP, ALP also raised several issues that the City finds concerning. This letter is to address the issues raised by ALP in the opening letter of their initial package proposal. While we have repeatedly addressed several of these reoccurring themes during bargaining, it is our hope that providing this information in written communication will provide a more thorough understanding to you and the ALP negotiating team.

First of all, ALP's assertion that as "a bargaining unit that represents approximately only 35 employees, whatever ALP may agree to will have little effect on the overall budget" requires clarification. Though ALP may consider any agreement to have "little effect on the overall budget," the fact remains that the contribution of every employee is crucial to the City's ability to deal with the budget shortfall and continue to provide essential services. ALP's participation will be significant in helping the City close what is, as of the date of this letter, a \$105 million General Fund budget deficit.

1. "City's Proposed Concessions"

In its opening letter, ALP contends that the "City negotiation team could not or would not attempt to assign an economic value, nor would the City demonstrate how the proposal assisted the City in achieving its goal of a ten percent reduction in Total

Compensation." ALP goes on further to state that the "City negotiators were unable to justify the budget figures that it provided to ALP in recent negotiation sessions as the City's calculation of Total Compensation for FY 2011-2012 (Exhibit A). Nor were the City negotiators able to explain why, if ALP already gave a 10% concession last year, a comparison of the FY 2010-2011 (Exhibit B) Total Compensation with FY 2011-2012 (Exhibit A) reveals that the Total Compensation per FTE of ALP went up by 6%!"

The City has explained on numerous occasions how the City calculated the ten percent (10%) total compensation reduction being asked of ALP. In response, ALP's negotiation team has taken numerous, sometimes conflicting positions with regard to the calculations, from being indignant at the City's explanations, to claiming they do not understand, to simply disagreeing. ALP's negotiation team members have taken these positions in various orders on numerous occasions. Nonetheless, ALP's disagreement with how the City calculated the 10% total compensation reduction does not equate to ALP's claim that the "City negotiation team could not or would not attempt to assign an economic value," nor does it support your assertion that the City would not "demonstrate how the proposal assisted the City in achieving its goal of a ten percent reduction in Total Compensation." The City has repeatedly acknowledged ALP's disagreement with its calculation, and it is disheartening that ALP keeps claiming that the City has not provided an explanation of its position or proposals when it is clear that ALP simply disagrees with the calculation.

Given the fact that ALP agreed to a 5% ongoing total compensation reduction for Fiscal Year 2010-2011, only an additional 5% ongoing total compensation reduction is required for ALP to meet the City's goal of reducing the total compensation of all of its employees by 10% for Fiscal Year 2011-2012. The City has calculated that the additional 5% ongoing total compensation reduction can be met by a 5.39% reduction in the base pay of all employees represented by ALP. As has been explained on numerous occasions at the bargaining table, the City calculated this percentage using the information from the Budget Office in the chart below:

Association of Legal Professionals (311) Salary and Fringe

	General Fund	Other Funds	Total
Base Salary and Associated Fringe			
Base Payroll	\$4,547,575	\$807,753	\$5,355,328
Associated Fringe:			
Federated Retirement	\$1,705,344	\$302,907	\$2,008,251
Unemployment	\$63,851	\$11,341	\$75,192
Total Associated Fringe	\$1,769,195	\$314,248	\$2,083,443
Total Base and Associated Fringe	\$6,316,770	\$1,122,001	\$7,438,771
Cost Distribution (%)	85%	15%	100%
Cost of 1%			
1% Base Salary Only	\$45,476	\$8,078	\$53,553
1% Associated Fringe	\$17,692	\$3,142	\$20,834
Total Cost of 1% Base/Assoc Fringe	\$63,168	\$11,220	\$74,388
Non-Associated Fringe			
Health	\$357,346	\$73,052	\$430,398
Dental	\$35,041	\$4,466	\$39,507
Miscellaneous	\$91,728	\$16,330	\$108,058
Total Non-Associated Fringe	\$484,115	\$93,848	\$577,963
Total Cost of 1% Base/Non-Assoc Fringe	\$4,841	\$938	\$5,780
GRAND TOTAL	\$6,800,885	\$1,215,849	\$8,016,734
TOTAL FTE	32.15	5.85	38.00
Average Cost Per FTE	\$ 210,966.68		

Date: February 28, 2011

Source: OMB ABS Report - Salary and Fringe
 Benefit Costs by Union Code & Fund for the
 2011-2012 Base Budget

NOTE: Does not include Worker's Compensation Costs

As shown above, the Total Compensation (i.e. the cost to the City for ALP) is approximately \$8 million. A 5% Total Compensation reduction would equal approximately \$401K (\$8 million multiplied by 5%). Multiplying the "Total Base and Associated Fringe" by 5.39% would equal approximately \$401K. Accordingly, the City has proposed a 5.39% reduction in base pay. Merely taking 5% from the "Total Base and Associated Fringe" would equal approximately \$371K, which would be short of the 5% reduction in Total Compensation and ignores the other costs to the City associated with its employees, such as medical benefits.

Secondly, ALP's fascination with how the cost of a Full Time Equivalent (FTE) could go up "by 6%!" for Fiscal Year 2011-2012 given the fact that ALP "already gave a 10% concession last year" ignores the fact that, of the 10% in concessions ALP provided in Fiscal Year 2010-2011, only 5% is ongoing. ALP has conveniently forgotten that 5% of the 10% in concessions expire at the end of FY 2010-2011, and, accordingly, their FTE cost for FY 2011-2012 includes this 5% increase in total compensation.

Additionally, ALP's utter shock at the increase in the total compensation for ALP represented employees assumes that the cost to the City for its employees remains static from one year to the next. The cost to the City for all of its employees has increased for 2011-2012. As the City has repeatedly explained, this increase is due to increases in benefit costs, including the Annually Required Contribution the City must pay into the Federated City Employees' Retirement System, as determined by the Retirement Board, as well as the projected increases to the City regarding the cost of providing healthcare to its employees.

In its letter, ALP asserts that:

The City's calculation of "Total Compensation" for employees is opaque. Particularly, with regards to the "unfunded liability" for the pension plan and the retiree healthcare benefit, the "unfunded liability" includes costs that are discretionary and are not at all "required," and more inappropriately includes also costs for employees no longer with the City and which cannot be reasonably called "compensation" to ALP members, nor to any other current employee. As a result of this larding of pension obligations to former employees upon current employee costs, the per current employee costs are grossly inflated in the City's documents.

As has been explained during negotiations, the Board of the Federated City Employees' Retirement System dictates the amount the City is required to contribute to the system. This amount, called the "Annually Required Contribution" or ARC, is expressed as a percentage of payroll for all employees, and thus becomes a cost of each FTE. While you have alluded to some portion of these contributions being "discretionary," it is unclear what portion of the ARC you would consider to be discretionary and we request that you provide a more detailed description regarding this assertion. Even if ALP was correct that payment of the ARC is "not at all "required," the failure to make that contribution would have dire financial consequences for the City as well as the members of the Federated Retirement System.

ALP also seems to contend that the Unfunded Liability should be attributed to each individual employee, retiree and deferred vested member, and that number should be used to drive the cost of each employee. However, that contention ignores the basic reality of the situation. The City's retirement plan is a defined benefit plan. The contributions made by

the City and the employees, taken together with asset gains/losses, are pooled and are not tracked by individual employee as it can be in a defined contribution plan. ALP is correct that the Unfunded Liability is 100% the responsibility of the City. However, it remains a cost which must be paid. With revenues declining, we have asked ALP and all other bargaining units to work with us to help the City fund your pension benefit. Your assertion that the City should simply ignore this cost shows an apparent disregard for the finite budget that the City must operate under and the detrimental impact the City's growing retirement funding obligation has on our limited resources available to provide services to the community.

Further, your assertion that there is a direct correlation between the total liability of the Federated Retirement System and the Unfunded Actuarial Accrued Liabilities (UAAL) is without justification and unverifiable. The liabilities are the total value of all benefits promised to all members of the Retirement System under the Plan's funding method. The unfunded liability is the difference between the liability and the total assets of the retirement fund. In order to accurately determine the unfunded liability attributable to each individual member of the Retirement System, one would need to begin at the inception of the plan and then track contributions, benefit payments, earnings and expenses for each of the active and retiree groups for each year (including the movement of such totals from the active to retiree total at the time of each retirement). This would provide a basis to divide the assets on a market value basis, but the records to perform such an analysis are not available. To those running totals would have to be added the remaining portion of the plan's deferred asset losses, somehow allocated between active and retired groups. This methodology would provide an allocation of the UAAL. ALP's assertion that 40% of the UAAL is attributable to current employees lacks any mathematical or actuarial basis. The fact that an unnamed actuary told a member of your bargaining team that he or she thought the 40% allocation might make sense is not persuasive.

As stated above, the City has provided adequate explanation for its proposals, and ALP's disagreements with how the City calculates "total compensation" or how it can allocate the Unfunded Liability to the retirement system is distinct from ALP's claim that the City has not provided ALP with the necessary information.

2. "City's Proposed Side Letters"

ALP's claims that the side letters offered by the City somehow endanger what ALP claims are their "vested rights" is disingenuous. As lawyers, ALP should know that these side letters would have no such effect. The side letters merely provide for continued discussion of specific items. The side letters do not provide for employees to waive any specific rights. The law is what it is, regardless of what subsequent agreements the City and ALP enter into. The side letters on Retirement Reform and the Supplemental Retiree Benefit Reserve (SRBR) merely document an agreement between the City and ALP to continue negotiations on these issues, and it further documents what rights the City maintains should negotiations reach impasse. There is no mention of a "waiver" by ALP or its members of any its legal arguments or positions.

Yet, ALP seems to have no concerns with having the City waive its legal arguments and positions by insisting that the City agree to a predetermined list of what is or is not a "vested right" prior to ALP entertaining negotiations on these issues. As some of the issues being discussed by ALP and the City may not yet be addressed by the legal system, it seems hypocritical of ALP to bind the City to issues which may or may not be legally determined.

The law regarding "vested rights," including both pension and retiree medical benefits, continues to evolve, with cases in the courts of appeals and before the Supreme Court. ALP's implication that the City is subverting or is otherwise ignorant of the laws surrounding retirement issues is inaccurate. The City is fully aware of its obligation to comply with any and all laws.

ALP's refusal to engage in "any future negotiations over" current employee pension benefits is discouraging as the City needs the help of its employees to solve its severe budget problems, and ALP's unwillingness to even discuss possible solutions to this financial crisis is unreasonable.

We understand that the issues the City and ALP are trying to work through are difficult, and we appreciate the fact that we are asking all City employees, including ALP, to make sacrifices to help the City balance its significant budget deficit. It is our hope that the commitment of both teams will provide the foundation necessary to move forward and achieve a successor agreement between the City and ALP.

Sincerely,



Gina Donnelly
Deputy Director of Employee Relations

c: Vera Todorov, ALP Vice President
Brian Doyle, ALP Negotiation Team Member
Michael Dodson, ALP Negotiation Team Member
Charles Sakai, City Negotiation Team Member
Marco Mercado, City Negotiation Team Member